

NATIONAL MEDIATION  
BOARD

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NATIONAL RAILROAD  
ADJUSTMENT BOARD

PUBLIC LAW BOARD NO. 1932

Award No. 8

Case No. 8

Parties United Transportation Union (T)

to and

Dispute Houston Belt and Terminal Railway Company

Statement of Claim: "Claim of Yardman E. R. Wyatt for pay for all time lost due to his unjust dismissal from the Company which became effective July 2, 1976; and to be reinstated with seniority and vacation rights unimpaired, including all fringe benefits lost during the period of his dismissal."

Findings: The Board finds, after hearing upon the whole record and all evidence, that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated March 31, 1977, that it has jurisdiction of the parties and the subject matter and that the parties were given due notice of the hearings held.

Claimant, on July 2, 1976, was the regular assigned Engine Foreman on the 3:00 PM Settegast-Port Transfer Job 218. A Patrolman of Carrier's Police Force, because of a traffic tie up, investigated, about 9:40 PM on July 2, as to why said transfer was blocking Lockwood Drive, a very busy thoroughfare, with a cut of cars. As a result of said Patrolman's observation of Claimant and the observation subsequently thereafter, by three other Carrier representatives, Claimant was removed from service pending formal investigation for alleged violation of Rule "G". As a result thereof, Claimant was found guilty as charged and dismissed from service as discipline therefor.

The function of Boards of this type is appellate in nature. The Board reviews the record established below, to determine whether:

- (1) the disciplinary proceedings were handled in consonance with the due process provisions contained in the Schedule (Agreement);
- (2) a finding of guilt is supported by substantial evidence; and
- (3) the discipline assessed is reasonable.

The Board finds that the alleged procedural deficiencies raised are not so substantive as to act as a bar to a review of the merits of this case. It is found that Claimant was accorded due process.

There was sufficient credible and probative evidence adduced to support Carrier's conclusion as to Claimant's guilt as charged. It has long been recognized that fellow employees and supervisors are considered as being competent lay witnesses to furnish credible evidence as to whether a fellow employee exhibits symptoms of being under the influence of intoxicants. Here, at least three Carrier witnesses testified that Claimant exhibited the classical symptoms of a person generally under the influence of intoxicants. They stated he gave off a strong odor of alcohol, that his speech was slurred, that he staggered, that his eyes were bloodshot, that he did not seem coordinated or have control of the switching operation, and that this busy thoroughfare traffic was blocked at least thirty minutes which had almost caused a riot. Further, as if to corroborate the testimony of Carrier's witnesses, Claimant admitted that he had been drinking, prior to his going on duty. The Board finds that the failure to find hard evidence of any alcohol, after a search therefor, either on Claimant, or on the engine, or in the crew's luggage, does not serve to dilute or dissipate the quality of the testimony of Carrier's witnesses. Such testimony and Claimant's admission clearly established his guilt, and leaves only the question of the discipline to be imposed.

Dismissal is the usual commensurate measure for a proven violation of Rule "G". Such measure is well known and well understood. Generally, absent compelling mitigating circumstances or reasons therefor, the discipline imposed by Carrier is not usually changed by appellate review. The Board finds that here there are certain circumstances present which serve to mitigate the discipline imposed. The record reflects that the employee has a reasonably good work record, that he is considered to be a good foreman, and that he has been out of service a sufficient length of time for the discipline imposed to have served a good purpose. He should be given consideration for a "last chance." Carrier offered, in

March, 1977, to reinstate Claimant on a leniency basis. Claimant's refusal of this compassionate gesture, in the circumstances herein, represents an exercise of poor judgment and was most imprudent. It merely served to keep Claimant out of service. The Board therefore reinstates Claimant to service, with all prior rights preserved, but without any pay for any time held out of service, subject to his successfully passing the usual return to service physical examination.

These findings and Award are issued in lieu of Interim Award No. 8 issued July 11, 1977.

Award: Claim disposed of as per finding.

Order: Carrier shall make this award effective within thirty (30) days of the date of issuance shown herein below.

  
G. R. Perkins, Employee Member

  
T. Minahan, Carrier Member

  
Arthur T. Van Wart, Chairman and  
Neutral Member

Issued at Falmouth, Massachusetts, August 11, 1977.